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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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9 IN RE: TOYOTA MOTOR CORP. CASE NO: **8:10ML2151 JVS (FMOX)**
10 UNINTENDED ACCELERATION
11 MARKETING, SALES, PRACTICES,
12 AND PRODUCTS LIABILITY LITIGATION **APPLICATION FOR APPOINTMENT**
13

14 In compliance with your Order issued April 14, 2010, I hereby submit my application to
15 be Co-Lead Counsel or a member of the Economic Loss Lead Counsel Committee in MDL No.
16 2151.

17 I hereby represent that I, and the Becnel Law Firm, have and will commit the ample re-
18 sources necessary to prosecute this litigation, will work cooperatively with the other attorneys
19 involved in this litigation, and have experience in complex litigation involving product liability,
20 mass torts, and class actions.

21 Below is an outline of my experience as it relates to MDLs and specifically automotive
22 cases I have helped prosecute throughout my career. Some of the automotive cases include::

- 1 1) MDL No. 1112 - In Re Ford Ignition Switch Products Liability Litigation;
- 2 2) MDL No. 1063 - In Re Ford Defective Paint Products Liability;
- 3 3) MDL No. 961 - In Re GM Sidesaddle Gas Tank Products Liability Litigation;
- 4 4) MDL No. 1373 - In Re Ford/Firestone;
- 5 5) MDL No. 991 - In Re Bronco II

6 In addition to the cases listed above, I was invited by the Committee of the Japan Society
7 of Mechanical Engineers Materials and Mechanical Division to give a speech at a forum for dis-
8 cussion related to Japan's new Products Liability Law, implemented July 1, 1995. Among the
9 corporations invited were Mitsubishi Motor Corp., Suzuki Motion Corp., Toyota Motor Corp.
10 and Isuzu Motors Ltd. Also invited to make a presentation was Bernard Ross, the founder of
11 Failure Analysis Association USA, which ultimately became Exponent. Mr. Ross made a pres-
12 entation on "Products Liability Exposure of Japanese Manufacturers in the United States." My
13 presentation was "An Overview of Products Liability Exposure in the United States Confronting
14 the Multi-National Automotive; Petrochemical; Medical Products and Drug Companies." Over
15 400 engineers, metallurgists and failure analysis personnel were in attendance. These presenta-
16 tions and discussions lasted from September 30 - October 2, 1996 in Fukuoka, Japan. From this
17 experience, as well as others, I was able to foster great relationships in Japan and throughout the
18 world and since have lectured at the Technical Institute in Vienna, Austria on Failure Analysis
19 before risk managers and insurance executives in various engineering disciplines.

20 My experience developing experts in failure analysis cases has honed my skills in the in-
21 vestigative, solutions to problems, as well as trial aspects of these types of cases. This expe-
22 rience began in the early 1970's when I won one of the first million dollar verdicts in the United

1 States in 1971.

2 My office has worked diligently over the past eight months to email the attorneys on a
3 daily basis dealing with issues related to the Toyota case. My early experience in this field pro-
4 vided me numerous experts to consult regarding this litigation. I personally contacted six of the
5 top experts from the United States and Japan to become involved in this case. They include Prof.
6 Michael Pecht who first wrote about sudden acceleration in 2002 in a book entitled "Sudden Ac-
7 celeration, the Myth of Driver Error." After I retained Dr. Pecht, he asked if he could also con-
8 sult with NHTSA, Congressman Waxman's Committee and the Department of Transportation.
9 See a letter from Congressman Waxman to Dr. Pecht thanking him for his services. Dr. Pecht
10 consults with other experts that I have retained internationally, including Prof. Huiei Peng and
11 Richard F. Dusek. I have shared many of the documents and opinions of my experts with law-
12 yers from around the country so that we could jointly work toward a solution to this most com-
13 plex MDL.

14 I have also been involved in numerous drug cases, many of which have issues dealing
15 with mass joinder, class certification, and extensive *Daubert* hearings. These include MDL No.
16 1014, In Re Orthopedic Bone Screw Products Liability Litigation. My office supplied many of
17 the lawyers who worked on this case, and I personally took many of the depositions, including
18 depositions in France for two weeks using interpreters, and dealing with many issues of product
19 failure and product liability.

20 I was also appointed in MDL No. 1148, In Re Latex Gloves Products Liability Litigation.
21 This case was ultimately settled after numerous depositions and preparation for trial.

22 I was appointed co-lead counsel in MDL No. 1629, In Re Neurontin Marketing, Sales,

1 Practices and Products Liability Litigation. We recently received a civil RICO verdict against
2 Pfizer, before U.S. District Judge Patti Saris, and now negotiations are ongoing to settle the case
3 globally. I was also appointed lead counsel in MDL No. 1724, In Re Viagra Products Liability
4 Litigation. This case, after depositions were taken by me in London and with numerous experts
5 throughout the country, was globally resolved. The settlement is confidential.

6 Judge Eldon E. Fallon appointed me to the Executive Committee in reference to the Mur-
7 phy Oil Litigation, which after one year of intense trial preparation and certification hearing was
8 settled within one year of the event.

9 I was appointed by U.S. District Judge Katz in MDL 1724, In Re Ortho Evra Products
10 Liability Litigation where all cases have settled after extensive discussions and negotiations.

11 My practice has allowed me to appear in over 40 chemical fires, explosions, train derail-
12 ments and the like cases. I was involved in a large chlorine release in the United States which
13 was certified and ultimately settled in Festus, MO. I was involved in the largest anhydrous am-
14 monia train derailment in the country in which a class was certified before U.S. Chief District
15 Judge Daniel L. Hovland in South Dakota. The case ultimately was appealed on the issue of
16 preemption, went to the Supreme Court and, thereafter, the Congress passed a bill exempting
17 railroad accidents from being preempted. This was signed by President George W. Bush. Cases
18 were tried in State Court to verdict and settled. The Canadian Pacific Railroad went to the appel-
19 late court on the issue of preemption, after the Congress and the President signed the Bill. In a
20 two to one decision, plaintiffs were successful and the remaining class was settled.

21 Our office was involved in the South Carolina train derailment which killed seven and in-
22 jured 6000. Our office did the claims administration for all of the plaintiffs in South Carolina

1 who were injured in this tragic railroad derailment. Matt Moreland of my office was in charge of
2 the claims process.

3 I was appointed to MDL No. 1632, In Re High Sulfur Content Gasoline Products Liabili-
4 ty Litigation. I hired all of the experts in this case and only one deposition was taken after which
5 the case was globally resolved for all clients. Among the issues with this case was the effect of
6 high sulphur gas on engines and various gas gauges and plastic and metallurgical components.

7 I tried to verdict the Mother's Day Bus Crash which involved products liability issues of
8 crashworthiness with the bus and MCI, road hazards with an improperly designed guard rail, and
9 medical issues with certifying a doctor to drive a bus with kidney failure. I was lead counsel in
10 this case and tried it for all of the 24 death victims and 17 injured persons.

11 My office was also hired by 83,000 people in the Katrina flood cases against the U.S.
12 Army Corps of Engineers. I am handling these client's cases pro bono in reference to the nu-
13 merous settlements that have been placed in the registry of the Court. The fairness of the settle-
14 ment is on appeal. Attached hereto is Judge Duval's Order acknowledging that I will handle
15 these Levee Failure cases pro bono. See Exhibit A.

16 Matt Moreland and Robert Becnel, of my office, were appointed to the Plaintiffs' Steer-
17 ing Committee in MDL No. 1873, In Re Fema Trailer Formaldehyde Litigation. Numerous trials
18 have already taken place.

19 I was recently appointed to the Plaintiffs' Steering Committee in MDL No. 2100, In Re
20 Yasmin and Yaz (Drospirenone) Marketing, Sales, Practices and Procedures Liability Litigation.

21 Just a few weeks ago I obtained class certification for the children, bus drivers and teach-
22 ers who were overcome with a chemical from the Chalmette Refinery while attending a re-

1 enactment of the Battle of New Orleans. See attached Minute Entry of Judge Ivan Lemelle. See
2 Exhibit B.

3 Most recently, I was appointed to MDL No. 2047, In Re Chinese Drywall Litigation by
4 U.S. District Judge Eldon E. Fallon. I have the privilege of representing Coach Sean Payton of
5 the New Orleans Superbowl Champion Saints, as well as hundreds of people who were injured
6 by this defective product. Eight cases have already been tried to verdict. Hopefully, we will be
7 able to resolve this case shortly as additional trials are scheduled in September.

8 I learned a great deal in my early years from people such as U.S. District Judge Alvin
9 Rubin and Eldon Fallon, who is now appointed to the federal bench. Eldon Fallon and I and the
10 Plaintiffs' Committee handled the largest maritime disaster in the United States which killed 78
11 people. I learned that trials help resolve cases, the earlier the better.

12 Enclosed is my Curriculum Vitae. See Exhibit C. I humbly ask for an appointment by
13 this Honorable Court in this most complex case. I can assure the Court that I personally have
14 done many of the investigations in this case and have obtained a team of experts that are unparal-
15 leled in a products liability case of this type. I personally attend and speak at numerous semi-
16 nars, including Mass Torts Made Perfect and Harris Martin on the issues of the Toyota Litiga-
17 tion.

18 While it is not my intention to try to influence the court, I do not believe anyone in the
19 country has as much experience that I have in MDLs over the past 25 years. With my experience
20 in MDLs, the Chairman of the MDL Panel, U.S. District Judge John G. Heyburn, II asked that I
21 participate with Professor Francis E. McGovern in a year-long "Multidistrict Litigation Study
22 Project." An important part of the Project is a survey of lawyers who are involved in all aspects

1 of the MDL process.

2 I personally take depositions, work with experts, and try cases continuously. My work
3 ethic and that of my office is unparalleled in the country. Our office opens at 7:30 a.m. and we
4 continually work past normal business hours. Many of the lawyers in our office, such as Matt
5 Moreland, who serves on the FBA Board of Directors, having previously served as president of
6 the largest chapter of the FBA in the United States, offer both to the profession of law and the
7 community. Our office has female attorneys from France and Germany who speak multiple lan-
8 guages.

9 It is this experience and resolve that I believe would be an asset as either Economic Loss
10 Co-Lead Counsel or as a member of the Economic Loss Lead Counsel Committee in not only
11 providing excellent communication to the Court of our progress with the litigation but also work-
12 ing together with committee members to accomplish the goals of the litigation for the entire
13 group of plaintiffs.

14 Since I was the co-moving party to establish the MDL, I thought it important that I ex-
15 press some of my views on not only my qualifications, but the qualifications of many of the law-
16 yers I have worked with during my 41 year legal career. As a result of having been involved in
17 most major MDL's on the civil side since 1975, I have worked with some of the best lawyers in
18 the United States. This includes Joseph Cotchett of Cotchett, Pitre and McCarthy; Paul Rhein-
19 gold and Hunter Shkolnik of Rheingold, Valet, Rheingold, Shkolnik & McCartney; Camilo Sa-
20 las, of the Salas Law Firm; Dianne Nast of Roda and Nast; Brian Panish of Panish Shea and
21 Boyle; Scott Weinstein of Morgan and Morgan; Jerry Parker of Parker, Waichman Alonso; Stan
22 Chesley of Waite, Schneider, Bayless and Chesley; Wylie Aitken, of Aitken, Aitken and Cohn;

1 John Climaco of Climaco, Lefkowitz, Peca, Wilcox and Garofoli; Richard Arsenault, of Neblett,
2 Beard and Arsenault and Mark Robinson, Robinson, Calcagnie and Robinson.

3 Joe, Paul and I, among others, handled one of the first major MDLs - MDL No. 330, In
4 Re Swine Flu Immunization Products Liability Litigation. Hunter Shkolnik, of Paul Rheingold's
5 office, and I have been involved in numerous cases which include MDL No. 1708, In Re Guidant
6 Corp. Implantable Defibrillators Products Liability Litigation and MDL No. 1726, In Re Med-
7 tronic, Inc. Implantable Defibrillators Products Liability Litigation. In addition, I have worked
8 with Joseph Cotchet in MDL No. 1691, In Re Bextra and Celebrex Litigation. Joe and Hunter
9 and their firms have the credentials, ability and finances available to handle a case of this magni-
10 tude.

11 Mark Robinson, of Robinson, Calcagnie and Robinson, and I worked together in the To-
12 bacco Litigation nationwide where Mark and I took a majority of depositions throughout the
13 country. The initial Tobacco case model was a concept formulated in New Orleans, wherein
14 Wendell Gauthier and myself, at the request of Pete Castano's widow, brought the Tobacco Liti-
15 gation. This litigation model ultimately proved to be successful throughout the United States. I
16 took the depositions of many of the toxicologists in the Tobacco wars, as well as the Chief Econ-
17 omist from Harvard for the Tobacco industry, W. Kip Viscusi. I was a member of the Plaintiffs'
18 Committee that tried a Tobacco case to verdict that lasted approximately one year. There were
19 over 20 appeals to the State and Federal Courts, and this case was successful in excess of \$500
20 million for smoking cessation (Scott v. The American Tobacco Co.).

21 Mark Robinson worked with a former member of my firm, Rebecca Todd, in the first
22 successful MDL trial in MDL No. 1657, In Re Vioxx Products Liability Litigation. Mark Ro-

1 binson is an outstanding lawyer, involved in most of the major MDLs over the past 15 years. He
2 and I, along with others, represented the State of California in the Tobacco Litigation, hired by
3 Attorney General Gray Davis. Mark recently argued the case before the Supreme Court of Cali-
4 fornia allowing us to move forward with the Light Cigarettes case in California. I was appointed
5 to the Plaintiffs' Steering Committee in MDL No. 2068 In Re Lights Cigarettes Marketing and
6 Sales Practices Litigation. It goes without saying that Mark Robinson has the ability, experience
7 and trial savvy to handle the Toyota MDL as Lead Counsel and/or Liaison Counsel.

8 I have worked very closely with Richard Arsenault, of Neblett, Beard and Arsenault, on
9 chemical plant explosions (Kaiser), the Guidant and Medtronic MDLs, the Vioxx MDL and the
10 Bextra/Celebrex MDL to name a few. Richard has extraordinary organizational skills and has
11 chaired seminars for Harris Martin and coordinated efforts to have people disseminate informa-
12 tion to the general public and the lawyers about these cases. I first met Richard Arsenault in an
13 accident that killed four people and injured six others as a result of a defective tire manufactured
14 by a Japanese company named Toyo tire. This case was ultimately settled after a jury was impa-
15 neled, numerous depositions taken and a great deal of discovery regarding the manufacturer of
16 the tires.

17 I have a great deal of respect and a fine working relationship with John Climaco from
18 Climaco, Lefkowitz, Peca, Wilcox and Garofoli in Cleveland, Ohio. We were appointed by U.S.
19 District Judge Kathleen O'Malley to Plaintiffs' Committee in MDL No. 1401, In Re Sulzer Or-
20 thopedics, Inc. Hip Prosthesis and Knee Prosthesis Products Liability Litigation and MDL No.
21 1535, In Re Welding Rod Products Liability Litigation. The Sulzer case ultimately settled for
22 one billion dollars after numerous depositions in Vienna, Austria. John also worked with us on

1 the Tobacco Litigation, as well as having worked with my office on train derailments and nu-
2 merous other MDL's. John has tremendous experience and is a trial lawyer with a great reputa-
3 tion.

4 I have worked with Wylie Aitken, of Aitken, Aitken and Cohn, through the Toyota case.
5 I attended a meeting Wylie co-chaired in Newport Beach for an entire day to streamline the is-
6 sues dealing with this MDL. He has an excellent reputation and the respect of virtually all of the
7 lawyers in attendance.

8 Stan Chesley of Waite, Schneider, Bayless and Chesley and I have worked together for
9 the past 25 years. Some of the MDLs we worked on include MDL No. 926, In Re Breast Implant
10 Products Liability Litigation. Stan was co-lead counsel where I supplied over 25 lawyers and
11 personnel to this project for over two years. I personally took the deposition of the CEO of Dow
12 Corning Corporation, Dr. Georgiade, the inventor of many of the breast implants. Through
13 Stan's skill, this case globally settled after numerous trials and much negotiation. I have also
14 worked with Stan in the Tobacco Litigation and the Teletronics Pacemaker Litigation. Judge
15 Spiegel appointed Stan and myself to organize the Teletronics Pacemaker Litigation in Cincin-
16 nati, Ohio. We ultimately tried a summary jury trial which narrowed the issues and resulted in a
17 global settlement. I also worked with Stan as Federal/State Liaison Counsel, appointed by U.S.
18 District Judge Louis Bechtle in MDL No. 1203, In Re Diet Drugs (Phenter-
19 mine/Fenfluramine/Dexfenfluramine) Products Liability Litigation. In Diet Drugs, Stan was co-
20 lead counsel when the case ultimately resolved for over 22 billion dollars after numerous deposi-
21 tions, document review and trial. Accordingly, Stan Chesley would make an excellent addition to
22 the leadership of this litigation.

1 I would also highly recommend the expertise of Jerry Parker of Parker, Waichman Alon-
2 so. Jerry has more technical knowledge with computers, computer programs and the Internet
3 then any lawyer in the United States. He has a staff of over 150 lawyers, paralegals and intake
4 personnel. I worked with Jerry on numerous MDLs, including MDL No. 2047, In Re Chinese
5 Drywall Litigation and MDL No. 1785, In Re Bausch & Lomb, Inc. Contact Lens Solution
6 Products Liability Litigation. Jerry personally took most of the Bausch & Lomb depositions and
7 had one of the largest inventory of cases in the United States. Jerry Parker's ability to coordinate
8 and organize discovery and plaintiffs in litigation would be an essential asset to this MDL.

9 Scott Weinstein of Morgan and Morgan is head of the Mass Torts department for one of
10 the largest plaintiff law firms in the United States. His firm has hundreds of personnel in 27 of-
11 fices throughout Florida and the south. I have worked with Scott on numerous cases including,
12 Chinese Drywall, and in MDL No. 2051, In Re Denture Cream Products Liability Litigation,
13 Scott serves as co-lead counsel. He would be an invaluable addition to this MDL.

14 Dianne Nast of Roda and Nast is an exceptional lawyer. She has worked as Lead Coun-
15 sel in too many MDLs to even mention. She also teaches at the Federal Judicial Center. She is
16 by far one of the most accomplished brief writers that I have met in my career. I highly recom-
17 mend her for appointment to this MDL.

18 Camilo Salas, of the Salas Law Firm, spent 25 years in law practice in Louisiana and
19 Puerto Rico as a defense attorney and over the last few years as a plaintiff attorney. His practice
20 has included the defense of the sudden acceleration cases for Audi for over ten years. He is a
21 bilingual Spanish speaking lawyer and has immense talent and has been involved with me in
22 numerous cases which have been resolved globally. We both have worked on the Capeco Oil

1 Tank Fire in which over 24 oil storage tanks burnt in San Juan for over five days. This is a case
2 which involves the destruction of homes, environmental damages, lost wages and business inter-
3 ruption. His experience in this realm of litigation would be of great assistance in the Toyota
4 case.

5 Brian Panish, of Panish, Shea and Boyle, is a trial lawyer whose reputation is respected
6 throughout the United States, having won jury trials throughout California. He has particular
7 expertise in automotive cases and I also recommend him highly.

8 By way of family, my father, Daniel E. Becnel, Sr. (deceased) was a war prosecutor in
9 both Germany and Japan during World War II and did not return until 1947. My wife, Judge
10 Mary Hotard Becnel, has been on the State Bench for 17 years. My first wife, Deonne Du Barry,
11 still works for my firm. So, if getting along with people is an issue, I do not think anyone in the
12 country can question that this is a testament to my ability to work well with others. Three of my
13 sons are lawyers. My oldest son, Daniel E. Becnel, III, practices in Colorado and Louisiana,
14 along with his wife, Kathryn Becnel, who was a former U.S. Attorney for 13 years. My son,
15 Christopher Devon Becnel, worked for Congress in the House of Representative for over five
16 years and has been working in my office since leaving Washington. His wife, Toni, worked for
17 the Senator Mary Landrieu, as well as several Congressmen. My son, Bradley Becnel, has
18 worked for President Clinton in the West Wing and the Clinton/Bush Global Initiative in which
19 he traveled pro bono on missions to help people throughout the world. He is presently working
20 in the White House as Special Assistant and Advance Lead to President Obama. He helped or-
21 ganize the Inauguration and set up trips to Cairo, Egypt, Istanbul, Turkey, Guadalajara, Mexico,
22 Rome, Italy, Copenhagen, Denmark and Baghdad, Iraq. He accompanied the President and did

1 the advance for the President's acceptance of the Nobel Peace Prize. He has literally traveled
2 non-stop handling events for the President, Vice-President, and Secretary Hillary Clinton and
3 numerous other cabinet members. Bradley worked with me on the Vioxx Litigation for three
4 years and enjoys the work he is presently doing more than practicing law. Bradley now utilizes
5 his law degree to help with the governmental aspect of our nation and intends to make a career in
6 government service. Attached please find a letter he recently received from the National Security
7 Advisor. See Exhibit D.

8 As you can see from the above, we have experience in governmental affairs, working
9 with the Congress and, in fact, one of my business partners was the administrative assistant for
10 Secretary of Transportation, Ray LaHood for years.

11 The Becnel Law Firm has represented defendants and plaintiffs in state and federal prod-
12 ucts liability cases, civil rights litigation, toxic tort class actions, administrative and regulatory
13 matters, and intellectual property litigation. We specialize in mass tort litigation and have an ex-
14 cellent relationship with both the defense bar and the scientific and expert community. Our firm
15 has the financial capability as well as the personnel and expert resources to handle this litigation
16 to completion.

17 The Becnel Law Firm has over 35 years of experience and success in litigating all types
18 of cases in both state and federal courts. We have litigated complex toxic tort and product liabili-
19 ty cases, including motion practice, class certification, and trials. Our attorneys and experts are
20 trained and experienced in scientific and engineering methods and procedures, which are particu-
21 larly relevant to the product liability and economic issues in this case.

22 Our firm has consulted and retained numerous experts regarding this litigation ranging

1 from engineers to economists. Accordingly, the Becnel Law Firm is committed to providing the
2 resources necessary to this litigation and is committed to devoting time and resources to working
3 with other plaintiffs' counsel on the Economic Loss Lead Counsel Committee, and respectfully
4 prays that this court appoint Daniel E. Becnel, Jr. to the Economic Loss Lead Counsel Commi-
5 tee.

6
7 Respectfully submitted,

8
9 /s/ Daniel E. Becnel, Jr.

10 Daniel E. Becnel, Jr. (LA Bar #24567)

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